

REMARKS

Reconsideration and further examination of the subject patent application in light of the present Amendment and Remarks is respectfully requested.

Claims 1-39 are currently pending in the application. Claims 1-39 stand rejected.

Rejection Under 35 U.S.C. §102

Claims 1-23 and 28-39 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 6,294,999 to Yarin et al. Applicant respectfully traverses this rejection.

Claims 1, 23 and 28 have been further limited to a set of instructions of a medication routine. Support for the additional limitation may be found within paragraph [0023] of the specification.

It may be noted first in this regard, that claim 1 is limited to the method step of “downloading a first set of instructions of the medication routine to the controller of the medication dispensing unit through the wireless transceiver, the downloaded set of instructions being adapted to control the dispensing of medication to the user from the medication unit”. Claim 28 contains similar limitations.

FIG. 1 of the specification shows a dispensing unit 12 that dispenses medication under control of a set of instructions of a medication routine. Further, “Executing a medication routine means dispensing the medication 116 by activating an actuator (e.g., a drive motor) while at the same time providing audio/visual information advising the patient on the proper method of using the medication” (specification, par. [0023]).

In contrast, Yarin et al. fails to dispense medication and also clearly fails to provide any control over the dispensing of the medication. Since the claimed medication routine would

contain instructions for activating an actuator, the claimed invention is structurally different than that of Yarin et al.

Rather than controlling the dispensing of medication, Yarin et al. explicitly states that “A Smart Tray according to the present invention passively and unobtrusively facilitates monitoring patient compliance with medication treatment regimens” (Yarin et al., col. 9, lines 63-65).

Since Yarin et al. merely passively monitors patient compliance, Yarin et al. could not provide the same functionality as that of the claimed invention. For example, “The control of the dispensing function by the medication processor also avoids the possibility of the user inadvertently receiving a double dose of medication” (specification, par. [0060]). Since Yarin et al. merely monitors, Yarin et al. could not function to prevent double doses of medication.

Since Yarin et al. merely monitors patient compliance, Yarin et al. does not do the same or any similar thing as that of the claimed invention. Since Yarin et al. does not do the same or any similar thing as that of the claimed invention, the rejections are improper and should be withdrawn.

Claims 24-27 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,963,136 to O’Brien. Applicant respectfully traverses this rejection.

It may be noted first that claim 24 is limited to “a cellular controller coupled to the medication dispenser and adapted to dispense the medication under control of instructions downloaded from a medication server through a local cellular communication system; and an audio/visual interface adapted to instruct a user on the use of the dispensed medication in accordance with the instructions downloaded through the local cellular system”. O’Brien clearly fails to meet this claim limitation.

For example, if O'Brien did have a cellular controller that is the same or equivalent to that of the claimed invention, then the O'Brien system would operate the same both at home and away from home. However, O'Brien does not operate the same when the user is away from home.

In this regard, O'Brien explicitly states that "The cellular telephone could be the primary voice and data links to the Interactive Prescription Compliance System. This would thereby eliminate the hard wired connection to the Customer Service Center and the PSTN" (O'Brien, col. 8, lines 54-58). However elimination of the hard wired connection causes O'Brien to operate without one of the "cellular controller coupled to the medication dispenser and adapted to dispense the medication under control of instructions downloaded from a medication server through a local cellular communication system" or the "audio/visual interface adapted to instruct a user on the use of the dispensed medication in accordance with the instructions downloaded through the local cellular system". For example, if the user is not at home, then O'Brien explicitly states that "Compliance of prescription drug taking would occur by contacting the Customer Service Center to dispense the correct amount of packetized medication from the Interactive Prescription Compliance Drug Dispenser (FIG. 1). The user would then physically take the medication dispensed and the Customer Service Center would simply call the user's cellular phone and advise same which medication to take at the correct time" (O'Brien, col. 8, lines 60-67). Since the dispensing of the correct amount of packetized medication occurs in response to a user contact, the instructions for dispensing the correct amount of packetized information would be different than those delivered to the user's cellular phone. In this case, the instructions to dispense the correct amount of packetized medication would include instructions

for all medications while the instructions delivered to the user's cellular telephone would only include "which medication to take at the correct time". As such, O'Brien doesn't have "a cellular controller . . . adapted to dispense the medication under control of instructions downloaded from a medication server . . . and an audio/visual interface adapted to instruct a user on the use of the medication in accordance with the instructions".

Since the O'Brien instructions for dispensing are different than those for use, O'Brien does not do the same or any similar thing as that of the claimed invention. Since O'Brien does not do the same or any similar thing as that of the claimed invention, the rejections are improper and should be withdrawn.

Closing Remarks

The art made of record by the Primary Examiner but not relied upon as a basis of rejection, does not, whether taken alone or in combination with Yarin et al. and/or O'Brien, anticipate or render obvious applicant's claim in the application.

For the foregoing reasons, applicant submits that the subject application is in condition for allowance and earnestly solicits an early Notice of Allowance. Should the Primary Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, the Primary Examiner is respectfully requested to call the undersigned at the below-listed number.

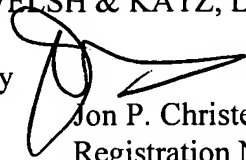
The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal, or

even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920. A duplicate copy of this sheet(s) is enclosed.

Respectfully submitted,

WELSH & KATZ, LTD.

By

A handwritten signature in black ink, appearing to read 'Jon P. Christensen', written over the printed name.

Jon P. Christensen

Registration No. 34,137

August 3, 2005
WELSH & KATZ, LTD.
120 South Riverside Plaza
22nd Floor
Chicago, Illinois 60606
(312) 655-1500
October 15, 2003